

D. McArthur



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Action Building Systems, Inc.--Reconsideration
File: B-235583.2; B-235584.2
Date: January 22, 1990

DIGEST

Request for reconsideration that is based on arguments that could have been, but were not, raised by the protester in the course of its original protest is denied.

DECISION

Action Building Systems, Inc., requests reconsideration of our decision in Action Building Sys., Inc., B-235583; B-235584, Sept. 19, 1989, 68 Comp. Gen. ___, 89-2 CPD ¶ 244, in which we denied Action's protest of the rejection of its bids under invitation for bids (IFB) Nos. GS-09P-89-KSC-0019 and GS-09P-89-KSC-0099. We found no evidence of fraud or bad faith in the agency's determinations that the protester was nonresponsible, based on unsatisfactory performance under its current contracts.

We deny the request for reconsideration.

The protester submitted the lowest bid received under both IFBs, for janitorial and related services at the U.S. Border Station in Calexico, California and three locations in Tucson, Arizona. After receiving reports from the contracting officer's representatives (CORs) at Calexico and at the agency's San Diego field office, the agency made separate determinations, under both IFBs, that the protester was nonresponsible based on its unsatisfactory performance under its current building maintenance contracts.

In its initial protest, Action defended its performance on its current contracts and argued that the agency improperly relied upon the adverse information supplied by the COR from the San Diego field office, who the protester believes provided such information in bad faith. In denying that protest, we pointed out that the contracting officer relied upon other sources in making his nonresponsibility determinations, such as the COR at Calexico, who supplied

047524/140737

independent grounds for the contracting officer to find the protester to be nonresponsible. Regardless of the information supplied by the COR in San Diego, we found no evidence of fraud or bad faith in either the information supplied by the Calexico COR or the contracting officer's determinations that were based on that information.

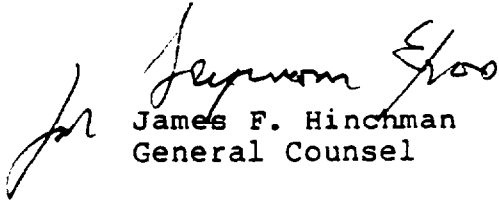
In its request for reconsideration, the protester alleges, for the first time, that fraud or bad faith also motivated the Calexico COR and argues that it was inappropriate for our Office to rely upon information regarding Action's performance on the Calexico contract in upholding the agency's nonresponsibility determination for the Tucson contract. The protester has also supplied copies of several monthly inspection reports which, according to the protester, demonstrate that it consistently exceeded requirements in performing the work in San Diego and at Calexico.

Our Bid Protest Regulations do not permit a piecemeal presentation of evidence, information or analyses, and where a party raises in its reconsideration request an argument that it could have, but did not, raise at the time of the protest, the argument does not provide a basis for reconsideration. FAA Seattle Venture, Ltd. -- Request for Reconsideration, B-234998.4, Oct. 12, 1989, 89-2 CPD ¶ 342. The original protest record (available to Action) clearly established that the agency relied upon (and that our Office would review) information from personnel in addition to those in the San Diego field office and upon contracts other than the Calexico contract concerning the protester's responsibility. The protester's attempt now to challenge this additional evidence, months after the agency made the protester aware of these facts, does not provide a basis for reconsideration. (We point out that, in any event, a contracting officer properly may consider a bidder's performance under all prior and current contracts in making his determinations of nonresponsibility. See Federal Acquisition Regulation § 9.104-3(c) (FAC 84-39).)

Concerning the monthly inspection reports provided to our Office by the protester, the agency has previously advised us that the inspection reports address only the cleanliness of buildings on a monthly basis, not the effort needed to enforce contract requirements and do not reflect day-to-day performance problems. The agency states that the adverse reports by the CORs at San Diego and Calexico were based on day-to-day experience, not the once-a-month building inspection; the protester's argument that only the monthly reports are indicative of overall performance does not

constitute evidence of fraud or bad faith by either COR or by the contracting officer in their reliance on the daily inspection reports to find Action nonresponsible.

We deny the request for reconsideration.

for
James F. Hinchman
General Counsel